***THE HON'BLE SRI JUSTICE V.ESWARAIAH**

+WRIT PETITION No.780 OF 2004

% 24-09-2004

A. SURYA BHASKARA RAO

...PETITIONER

Vs.

$ THE DISTRICT COOPERATIVE OFFICER, E.G.DIST, AT KAKINADA & 3 OTHERS.

...RESPONDENTS

< GIST

> HEAD NOTE:

! COUNSEL FOR PETITIONER: MR.G.VIDYASAGAR, ADVOCATE

^COUNSEL FOR RESPONDENTS 1,2 & 4: G.P.FOR COOPERATION

COUNSEL FOR RESPONDENT NO.3:MR.C.V.RUDRA PRASAD

? CASES REFERRED:

Computer No.56

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

-

WRIT PETITION No. 780 of 2004

Between:

A.Surya BhasKara Rao S/o.Sesha Rao, Age:51 Yrs,
Occ;Secretary, A.Vemavaram PACS,

Amalapuram Mandal,E.G.Dist.

... PETITIONER

AND

1. The District Cooperative officer, E.G.Dist.at Kakinada.
2. The Divisional Cooperative Officer, Amalapuram,E.G.Dist.
3. The A.Vemavaram PACS, Amalapuram Mandal,E.G.Dist.,

   rep.by its Chairman/Person-in-charge.
4. G.Y.S.Sarma, Branch Manager, D.C.C.B/Chairman,
   A.Vemavaram PACS, Amalapuram Mandal, E.G.Dist.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned action of the 3rd respondent in issuing impugned proceedings dated 5-1-2004 suspending the petitioner without having any jurisdiction or power or authority as highly illegal, arbitrary and violatiive of Article 14 of the Constitution of India and also provisions of A.P. Cooperative Societies Act and consequently set aside the same.

Counsel for the Petitioner : Mr.G.VIDYASAGAR

Counsel for Respondents 1,2 & 4: G.P. FOR COOPERATION

Counsel for the Respondent No.3: MR.C.V.RUDRA PRASAD

The Court made the following :

O R D E R:

The petitioner questions the order of the third respondent- A.Vemavaram Primary Agricultural Cooperative Society, Amalapuram, E.G. District, dated 5.01.2004, placing him under suspension, on the allegations that while discharging duties, the petitioner obstructed day to day functions of the society, not collected the loan amounts regularly from the members, negligent in attending the duties and misappropriated the funds of the society. Basing on the complaints received with

regard to the above irregularities, the Person-in-charge Committee passed a resolution on 5.01.2004 placing the petitioner under suspension in order to conduct regular enquiry.

The case of the petitioner is that he has been working in the third respondent society from 30.07.1990 onwards, and he was placed under suspension, pending enquiry by the third respondent by its order dated 5.1.2004.

Learned counsel for the petitioner submits that the petitioner worked in various societies from 1985 onwards, and the common cadre of the secretaries working in the Primary Agricultural Cooperative Societies was abolished by the Amendment Act 21 of 1985, and that Section 116-AA was inserted in A.P. Cooperative Societies Act, 1964 (for short "the Act") and the decaderised secretaries are sought to be allotted to various societies. The petitioner was not allotted permanently to any society though he has been working continuously in the third respondent society from 30.07.1990 onwards, and therefore, it cannot be said that he is the permanent employee of the third respondent society. As per Rule 72 (5) of A.P. Cooperative Societies Rules, 1964 (for short "the Rules"), as amended in G.O.Rt.No.1104, Agriculture and Cooperation (Coop.IV) Department, dated 4.12.2003, he shall be deemed to have been allotted to the Primary Agricultural Cooperative Society, in which he was working at the time of abolition of the common cadre, and shall be governed by the provisions of sub-rules 3 and 4 of Rule 72 of the Rules. As per the provisions of sub-rules 3 and 4 of Rule 72, during interregnum period of finalisation of allotment, the service conditions of the secretaries working in the societies shall be governed by the service regulations framed by the Registrar of Cooperative Societies. Therefore, the action of the third respondent society in placing the petitioner under suspension is contrary to the service regulations issued by the Registrar of Cooperative Societies, which was adopted by the respective societies. The learned counsel for petitioner placed reliance on the letter dated 14.5.2001 issued by the General Manager, District Cooperative Central Bank contending that the Society has no power or authority to initiate action against the Secretaries of PACS, and if any irregularities committed by the Secretaries, the same shall be informed to the General Manager, DCCB, who in turn will take action against the Secretaries. Therefore, petitioner contends that the action of the third respondent is contrary to the letter issued by the General Manager, District Cooperative Central Bank.

The second respondent filed a counter stating that the petitioner opted to work in the third respondent society and he continued as secretary from July, 1990 till the date of his suspension, i.e. on 5.1.2004, for misappropriation of funds and other serious irregularities, and therefore, the petitioner is deemed to be an employee of the third respondent society. The persons-in-charge, who are managing the affairs of the third respondent society, placed the issue before the Managing Committee of the society and in view of the allegations of misappropriation of funds etc. against the petitioner, the Managing Committee resolved to place him under suspension pending enquiry. It is further stated that previously a statutory inspection was ordered under Section 52 of the Act and the petitioner questioned the said action in W.P.No.16895 of 2002. This Court while observing that the report of the Sub-Divisional Cooperative Officer, Amalapuram *prima facie* shows that there are certain irregularities committed by the petitioner and the truth or otherwise can only be established after inspection, and therefore, the impugned order has been rightly passed with due diligence and in exercise of powers conferred under Section 52 of the Act, dismissed the said writ petition by its order dated 16.9.2002, giving liberty to the petitioner to raise all the contentions during the course of inspection.

Learned Government Pleader for Cooperation contends that a statutory inspection was made in which it has been found that there was tampering of entries in the cash book, expenditure was made without any pay orders of the Chairman/Person-in-charge Committee, thereby causing loss to the third respondent society, misappropriation of society funds etc., on the part of the petitioner. Basing on the said inspection report, the petitioner was placed under suspension pending enquiry, which is just and proper.

The question that arises for consideration as to whether “it is open for the petitioner to contend at this point of time that he is not a permanent employee of the third respondent society and that the third respondent society has any power or authority to place him under suspension”. It is not in dispute that the Registrar was informed to constitute a common cadre for the secretaries of the Primary Agricultural Cooperative Societies. But, realizing the difficulties of having common cadre in respect of the Primary Agricultural Cooperative Societies, Section 116-AA was inserted in the Act, by Act 21 of 1985, with effect from 22.4.1985. Section 116-AA of the Act shows that the common cadre for all categories of employees other than those specified in Section 116-A, constituted before the commencement of A.P.

Cooperative Societies (Amendment) Act, 1985, and existing at such commencement shall stand abolished with effect on and from the date of commencement, and upon such abolition, it shall be lawful for the Registrar to allot, subject to such rules as may be made in this behalf, the employees included in the cadre so abolished to such Primary Agricultural Credit Societies as he may deem fit. It is stated that the petitioner was not allotted to any of the society by the Registrar and that though he was only continuing in the third respondent society, he is not the permanent employee of the third respondent society.

To implement Section 116-AA and 116-C (1) of the Act, rules have been amended and the relevant rules are 28, 36-B and 72. Under Section 116-C of the Act, read with Rule 28 and 36-B of the Rules, it is the mandatory duty of all the societies to specify the staffing pattern, qualifications, method of appointment, scales of pay and other allowances for its employees for approval of the Registrar of Cooperative Societies, subject to the condition that expenditure towards pay and allowances of the employees shall not exceed 2% of the working capital or less than 30% of the Gross Profit. Under Rule 28 (1) of the Rules, no society shall appoint any person as its paid employee in any category of service, unless he possesses requisite qualifications, as specified from time to time for such category of service in the society. Under Rule 28 (2) of the Rules, insofar as primary agricultural cooperative societies, to whom there is no financial aid by the State, are concerned, they should fix the staffing pattern, subject to approval of the Registrar, in conformity with Section 116-C of the Act. Under Rule 28 (4), every society within 45 days of registration shall frame and submit to the Registrar for approval of its staffing pattern which shall include service rules for its employees, specifying staffing pattern, qualifications, method of appointment, scales of pay and allowances, responsibilities, duties, or any securities and disciplinary rules etc, and the revision of any of the service rules or pay scales etc, shall be made by the General Body on the recommendation of the Managing Committee, provided the staff cost and contingencies are less than 2% of the working capital or less than 30% of the Gross Profit, whichever is less. If any society is incurring expenditure in excess of the said norms, the members of the Managing Committee are personally held responsible. Under Rule 36-B, every society shall earmark the expenditure incurred towards pay and allowances, in conformity with Section 116-C of the Act. Guidelines have been framed under Rule 72 for allotment of the decader secretaries. Under Rule 72 (2), the allotment of decader secretaries to each society shall be regulated as follows:

> "(a) Each candidate (Secretary) shall indicate to the concerned Co-operative Central Bank his/her choice for allotment to any three societies in the order of preference outside the revenue mandal within which the village of his/her nativity falls, within a period of thirty days from the date on which this rule comes into force."

It is clear from the aforesaid rule that each secretary shall indicate to the concerned Cooperative Central Bank his choice for allotment to any three societies, in order of preference, outside his native revenue mandal within a period of thirty days from the date on which the said rule comes into force. The said rule came into force on 13.09.1985. On such option, it is for the Registrar or the person, to whom the powers of the Registrar have been delegated, to allot such of the societies from their option. Under Rule 72(3)(a), the secretary on allotment to a society, shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed from the funds of the society. Under rule 72(3)(b), the service conditions of the secretaries working in the societies shall be governed by such service regulations, as may be framed by the Registrar for adoption by the societies. Under rule 72(4), the society alone is empowered to exercise disciplinary control over the secretaries. Even assuming that there was no allotment of secretary to a particular society, the disciplinary authority over the said secretary is by the society only, in which he was working.

It has to be seen in the present case that it is the mandatory duty on the part of the petitioner to exercise his option indicating three societies, in order of preference, to which he would like to be allotted. Admittedly, the petitioner has not stated, either in the writ affidavit or during the course of the arguments, as to whether he has indicated his option to work in the third respondent society or not. On the other hand, in the counter filed by the second respondent, it is stated that in fact petitioner was opted to work in the third respondent society and continued as such from July, 1990 till the date of his suspension i.e. 5.01.2004. In reply to the said contention, the learned counsel appearing for the petitioner submits that even assuming that the petitioner opted to work in the third respondent society, there is no order of the competent authority allotting him to the third respondent society. In the absence of any such order, petitioner shall be deemed to have been allotted to the primary agricultural cooperative society, in which he was working at the time of abolition of

the common cadre. When a question has been put to the learned counsel for the petitioner that in which society the petitioner was working as on the date of abolition of the common cadre, there was no answer from the counsel as to in which society the petitioner was working on the date of abolition of the common cadre. But, on the other hand, the specific case of the respondent No.2 is that the petitioner has opted to work in the third respondent society only, and whenever the society wanted to take disciplinary action for the irregularities committed by him, he has been contending that he was not permanently allotted to the third respondent society, and therefore, the third respondent society has no power to take any disciplinary action against him, contrary to the service regulations. Even otherwise, there is no contention as to whether the society has not followed the service regulations, or there was any difference between the service regulations and society special by-laws in placing the petitioner under suspension. I am of the view that the petitioner is not entitled to take advantage of the situation and contend that there is no permanent allotment of his service to the third respondent society for the purpose of taking disciplinary action against him. The petitioner has continuously worked for a period of 14 years in the third respondent society and his services are deemed to have been allotted to the third respondent society only.

Learned Government Pleader appearing for the respondents submits that in fact some of the secretaries of the primary agricultural cooperative societies have questioned before this Court, the allotment made by the cooperative officers, contrary to the options given by them and the implementation of Section 116-AA. In the instant case, the petitioner never questioned the allotment or non-allotment and in fact, he has opted to work in the third respondent society only and therefore, it cannot be said that he is not the allotted secretary to the third respondent society. The petitioner instead of facing the disciplinary proceedings initiated against him, made serious allegations and wanted to escape the liability on the ground that the third respondent society has no power or authority to initiate disciplinary proceedings against him. Rule 72(5) of the Rules goes to show that where the secretaries were not allotted to any primary society, for any reason whatsoever, as per the guidelines issued under sub-rule 1 and 2, they shall be deemed to have been allotted to the primary agricultural cooperative societies, where they are working at the time of abolition of the common cadre and shall be governed as per the provisions of sub-rules 1 and 2. But, in the instant case, there was no litigation or any dispute with regard to treating of the petitioner as an employee of the third

respondent society. In the absence of any factual foundation made by the petitioner as regards his contention that he is not the permanent employee of the third respondent society, I am of the opinion that the petitioner shall be deemed to be the employee of the third respondent only, and the third respondent has rightly exercised its power by placing him under suspension, pending enquiry.

I do not see any merits in the writ petition and the same is accordingly dismissed. No costs.

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24th September, 2004

Note: L.R.copy be marked.

(B/o)

pan/da

One fair copy to the Hon'ble Mr.Justice V.Eswaraiah

(For his Lordship's kind perusal)

To

1. The District Cooperative officer, E.G.Dist.at Kakinada.
2. The Divisional Cooperative Officer, Amalapuram,E.G.Dist.
3. The Chairman/Person-in-Incharge,

   The A.Vemavaram PACS, Amalapuram Mandal,E.G.Dist.
4. G.Y.S.Sarma, Branch Manager, D.C.C.B/Chairman,
   A.Vemavaram PACS, Amalapuram Mandal, E.G.Dist.
5. Two CCs to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).

6. 8 L.R.copies.
7. The Under Secretary, Union of India,

   Ministry of Law, Justice and Company Affairs, New Delhi.
8. The Secretary, A.P. Advocates' Association,

   Library, High Court Buildings, Hyderabad.

9. Two C.D. copies.